

Claimant alleges she injured her back when her supervisor, Angie, ran into her with a large toaster on a cart. The accident occurred, on a Monday at around 10:00 a.m., sometime in May 2001. Claimant testified the cart hit her so hard that she cried out, "It hurts". After the accident, claimant testified that Angie apologized for hitting her with the cart.

Before claimant's alleged back injury, claimant injured her ankle and foot in a work-related accident while working for the respondent. In fact, at the time of the November 27, 2001, preliminary hearing, claimant was still receiving medical treatment for her foot and ankle injuries.

Because of those work-related injuries, claimant admitted that she knew she had to notify the respondent of any work-related accident and complete an accident report. But for this alleged accident, claimant did not fill out an accident report. Claimant also never requested medical treatment until her attorney requested that respondent provide medical treatment for the alleged back injury in a letter to respondent in September of 2001. The claimant also testified that after she was struck by the cart, she did not miss any work but the heavy lifting she was required to do at work caused her back to worsen.

Raymond E. Mann was respondent's general manager of the restaurant where claimant was employed in May 2001. Mr. Mann testified before the ALJ at the preliminary hearing. He testified he had no knowledge that claimant was claiming a work-related back injury until he received the letter from claimant's attorney in September 2001. Mr. Mann further testified that none of his supervisors or assistant managers had reported to him that claimant had suffered a work-related back injury in May 2001. Mr. Mann described the procedure respondent had in place for reporting work-related accidents in May 2001. As soon as a supervisor or an assistant manager was notified of a work-related accident, they had the responsibility of filling out what the respondent referred to as a KHRA form and fax a cover page directly to the respondent's home office. But Mr. Mann was never advised of claimant's alleged back injury by either a supervisor or assistant manager.

The Board finds claimant's testimony troubling in regard to why she did not request medical treatment for her injured back when she admits she knew of the requirement to notify respondent of a work-related injury, she knew of the further requirement of completing an accident report form and respondent was already providing medical treatment for a previous work injury. Additionally, claimant is unclear as to the date the accident occurred. Also, other than her own testimony, there is no supporting medical evidence as to claimant's current need for medical treatment and the relation of that need to the alleged work-related accident.

The ALJ had the opportunity to personally observe the claimant and respondent's representative, Mr. Mann, testify before her. Thus, the ALJ had the opportunity to observe the witnesses' demeanor and judge their credibility. The ALJ apparently denied claimant's request for medical treatment because she did not find claimant truthful. The Board finds

that some deference should be given to the ALJ's findings and conclusions because she was able to judge the witnesses' credibility by personally observing them+ testify. Therefore, giving some deference to the ALJ, the Board concludes, for preliminary hearing purposes, that the claimant failed to prove that she suffered an accidental injury arising out of and in the course of her employment and further failed to prove she gave respondent the required timely notice of accident.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Nelsonna Potts Barnes' November 27, 2001, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director